

**TIP RATE DETERMINATION AGREEMENT  
(Gaming Industry)**

between

Department of the Treasury-Internal Revenue Service

and

[Employer]

, [ENTER STREET ADDRESS, CITY, STATE, ZIP CODE], ("Employer") hereby agrees to the following Tip Rate Determination Agreement ("Agreement" or "Gaming TRDA").

All employees who receive tips are required (1) to keep contemporaneous and accurate records of the tips received, (2) to report the tips received to their employer at least monthly, and (3) to report those tips on their federal income tax returns.

This document has been developed pursuant to the Market Segment Understanding (MSU) Program. The purpose of this document is to implement a program (1) to ensure maximum compliance by the employees of the Employer with those provisions of the Internal Revenue Code of 1986, as amended, relating to tip income; and (2) to avoid disputes under section 3121(q) of the Code. This program will minimize the burden on the Employer resulting from tip compliance programs of the Internal Revenue Service as well as reduce enforcement costs.

The parties therefore agree as follows:

**I. DEFINITIONS**

A. Service Representative means the Internal Revenue Service employee or delegate authorized to execute or terminate this TRDA on behalf of the Internal Revenue Service and Indian Tribal Governments.

B. Gaming establishment means a casino or other building, vessel, or room used for gambling. It includes land and water based establishments, bingo parlors, card rooms, slot machine and keno facilities, and any similar place where wagering is conducted.

C. Employee means an individual who

1. is described in an Occupational Category defined in section I.E.,

2. has completed more than 30 consecutive days of service with the Employer,  
and

3. regularly and routinely receives tips (directly or indirectly) of at least \$20 a month during the course of the Employee's employment.

D. Employer means

[ENTER STREET ADDRESS]  
[ENTER CITY, STATE, ZIP CODE]

E. Occupational Category means a category listed in Attachment A.

F. Participating Employee means an Employee who--

1. Gives to the Employer a signed Tipped Employee Participation Agreement ("TEPA") (including, but not limited to, the language of Attachment B), indicating participation in the tip reporting program, and

2. In accordance with this Agreement, reports tips to the Employer, as required by law, at or above the tip rate established for the Employee's Occupational Category.

At the option of the Employer, a Participating Employee may also include a tipped employee with 30 or fewer days of service who has given the Employer a signed TEPA.

G. Tip Rate means the applicable rate described in Section III.

## II. COMMITMENT OF EMPLOYER

A. Records maintenance requirements. While this Agreement is in effect, and in addition to records otherwise required to be maintained, the Employer agrees to maintain the following records:

1. Employee records. For each Employee, the Employee's name and social security number; the Employee's Occupational Category or Categories (as defined in section I.E.); the Employee's reported tips; and the Employee's shift(s) and/or hours. For food and beverage employees, the Employee's charged tips (if any) and sales (if appropriate),

2. Gaming establishment records. If the Employer is not otherwise required, by state statute or regulation, to maintain records of tips received by gaming establishment Employees,

a. For each instance of token and chip-cashing, the dollar amount of tokens and chips presented to the cage for cashing by the token committee (or other representatives of gaming establishment Employees), and

b. For each instance of token and chip-cashing, a list of the tip splits furnished to the Employer by its Employees or the token committee (or other representatives of gaming establishment Employees).

3. Food and beverage operations records. If the Occupational Categories defined in section I.E. include food or beverage servers,

a. Gross receipts subject to food or beverage tipping, and

b. Charge receipts showing charged tips.

4. Tip rates records. For each Occupational Category, all records of data used to determine the tip rates.

The Employer must retain the records listed in this section II.A. for at least 4 years after the April 15 following the calendar year to which the records relate.

B. Requirements for furnishing information. The Employer will furnish to the Service Representative the following documents:

1. Annual report of Employees.

a. General rule. For each Employee who is a nonparticipating Employee on the last day of the calendar year, an annual report showing the Employee's name and social security number; the Employee's Occupational Category or Categories (as defined in section I.E.); and the Employee's shift(s) and hours. The report may list all Employees as long as the required information is included for all nonparticipating Employees. The report is due on March 31 following each calendar year.

b. Exception. No report is required for a calendar year if the Employees reported tips for the calendar year at a rate equal to or greater than the rates established under section III. of this Agreement.

2. Form 8027. If the Occupational Categories defined in section I.E. include Employees of one or more food or beverage establishments, a copy of the Forms 8027, Employer's Annual Information Return of Tip Income and Allocated Tips, filed for those establishments with the service center. The copies are due on the last day of February following each calendar year.

C. Requirements for making records available at the request of the Service Representative. At the request of the Service Representative, the Employer will furnish any of the records identified in section II.A.

D. Requirements for filing returns and paying and depositing taxes. The Employer will comply with the requirements for filing all required federal tax returns and paying and depositing all federal taxes.

### **III. TIP RATES**

A. Methods of measuring tips. Depending on the Occupational Category and the Employer's business practices, tips can be measured in different ways. This Agreement contemplates the following types of measurements:

1. Actual tips. Actual tips generally apply to Employees in Occupational Categories where pooling of tips is common. Generally, they pool the tips collected during a shift and split the total among the Employees of the Occupational Category who worked the shift.

2. Tip rates. Tip rates generally apply to Employees in Occupational Categories where pooling of tips is not common. The rate may be a percentage of sales, a dollar amount per hour or shift, a dollar amount per drink served, a dollar amount per dealing hour, or other accurate basis of measurement.

B. Actual tips. Employees in Occupational Categories where tips are pooled and split must report the actual amount of tips they receive. The tip rate method of reporting tips is not available for these Employees.

C. Tip rates.

1. Methods for determining tip rates. The Employer will determine tip rates for the Occupational Categories based on information available to the Employer, historical information provided by the Service Representative, and generally accepted accounting principles. The rates will specify whether the tips are received as a percentage of sales, a dollar amount per hour or shift, a dollar amount per drink served, a dollar amount per dealing hour, or on another basis.

2. Initial tip rates. The initial tip rate approved for each Occupational Category is shown on Attachment A. Where Employees pool and split tips, the "Actual tips" method will be indicated on Attachment A.

D. Determination of subsequent tip rates and Occupational Categories.

1. Annual review. The Employer will review annually, on a calendar year basis, the tip rates assigned to its Occupational Categories. In connection with this review, the

Employer may review its Occupational Categories. The initial rates for each Occupational Category shown on Attachment A will apply to the first full calendar year of this Agreement.

2. Procedures.

a. Employer submission. If the Employer believes that a revision of one or more rates or Occupational Categories is appropriate, the Employer will submit proposed revisions to the Service Representative by September 30. If the Employer fails to submit a proposed rate revision by September 30, the Employer will be treated as having submitted the rate in effect for the current year.

b. Service Representative review. The Service Representative of the Internal Revenue Service will review the proposed rates and notify the Employer in writing of its approval or disapproval by November 30. If the Service Representative does not approve one or more proposed rates, the existing rate or rates will be continued until no later than the last day of the following February. If the Employer and the Service Representative are unable to agree upon a rate or rates by the last day of the following February, this Agreement will terminate pursuant to section V.C.

3. Effective date of revised rates and Occupational Categories. Approved revised rates and Occupational Categories for a calendar year will become effective on the later of (1) January 1 of the calendar year, or (2) the first day of the month following the date the Employer and the Service Representative agree upon a revised rate.

**IV. COMMITMENT OF INTERNAL REVENUE SERVICE**

A. Participating Employee. The Internal Revenue Service will not examine a Participating Employee's tip income for any period for which a TEPA is in effect, if the Employee reports tips to the Employer at or above the tip rate established for the Employee's Occupational Category and the Employee reports that income on a timely filed return.

B. Employer.

1. General rule. Except as provided in section IV.B.2. below, any section 3121(q) notice and demand issued to the Employer by the Service Representative with respect to tips received by Employees in the Occupational Categories defined in section I.E. shall be based solely on amounts reflected on one or more of the following forms:

a. Form 4137, Social Security and Medicare Tax on Unreported Tip Income, filed by an Employee with his or her Form 1040, or

b. Form 885-T, Adjustment of Social Security Tax on Tip Income Not Reported to Employer, prepared at the conclusion of an employee tip examination.

## 2. Special rules.

a. Termination. In the event of a termination under section V., the general rule in section IV.B.1. will apply with respect to tip income actually received by (or deemed under section 3121(q) of the Code to have been paid to) Employees during the period from the effective date of this Agreement until the effective date of termination.

b. Ongoing Tip Examination or TRDA Validation. This Agreement will not affect any tip examination or TRDA validation of the Employer that was begun before this Agreement is entered into.

C. Compliance review. The Internal Revenue Service may evaluate the Employer and its Participating Employees for compliance with the provisions of this Agreement.

## V. **TERMINATION**

A. Termination by Employer. The Employer may terminate this Agreement at any time.

B. Termination by Internal Revenue Service. The IRS may terminate this Agreement if:

1. Lack of Employee participation. At the end of any calendar year, less than 75 percent of the Employees in the Occupational Categories defined in section I.E. are Participating Employees,

2. Failure of Employer to comply with section II. The Employer fails to meet any of the requirements of section II., or

3. Other. This Agreement can be revoked if the Service is involved in an administrative or judicial examination, investigation, or proceeding involving the Employer or a related party, whether the examination, investigation, or proceeding is initiated before or during the Employer's participation in the Agreement.

C. Termination upon failure of parties to agree to revision of tip rates. If the Employer and the Internal Revenue Service fail to agree to a revision of any of the tip rates under the procedures set forth in section III.D.2.b., this Agreement will terminate.

D. Notice of termination and effective date. Any termination under section V.A. or B. must be in writing and will be effective on the first day of the calendar quarter following the date of the notice.

## VI. **MISCELLANEOUS**

- A. Effective date of agreement. This Agreement is effective on the first day of the first calendar quarter following the date the Service Representative signs the TRDA.
- B. Examinations and/or inspections of books and records. For purposes of this TRDA –
1. Compliance review. A compliance review is not treated as an examination or an inspection of the taxpayer's books of account or records.
  2. Examination. The inspection of books of account or records pursuant to a tip examination is not an inspection of books or records for purposes of section 7605(b) of the Code, and is not a prior audit for purposes of section 530 of the Revenue Act of 1978.
- C. Notices. The parties will send all correspondence pertaining to this TRDA to the address stated below, unless notified in writing of a change of address. In the event of a change of address, the parties must send all correspondence to the new address. All notices are deemed to be sent or submitted on the date of the postmark stamped on the envelope or, in the case of a notice sent by certified mail, the sender's receipt.
- D. Authority. The Employer represents that it has the authority to enter into this TRDA.
- E. Statutory changes. The Commissioner of Internal Revenue Service may terminate this Agreement at any time following a significant statutory change in the FICA taxation of tips.

## VII. PAPERWORK REDUCTION ACT

The collections of information contained in this document have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507(c)) under control number 1545-1530.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number. The collections of information in this document are in sections II.A, II.B., II.C., III.D., V.A., and V.D. This information is required to comply with sections 6053(a) and 6001 of the Internal Revenue Code and to assist the Internal Revenue Service in its compliance efforts. This information will be used to monitor the Employer's performance under the Agreement. The collections of information are required to obtain the benefits available under the Agreement. The likely respondents are business or other for-profit institutions.

The estimated total annual reporting and/or recordkeeping burden is 4,367 hours.

The estimated annual burden per respondent/recordkeeper varies from 12 hours to 99 hours, depending on individual circumstances, with an estimated average of 44 hours. The estimated number of respondents and/or recordkeepers is 100.

The estimated annual frequency of responses (used for reporting requirements only) is on occasion.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by section 6103 of the Code.

## VIII. SIGNATURES

By signing this Agreement, the parties certify that they have read and agreed to the terms of this document, including Attachments A and B.

### EMPLOYER

### INTERNAL REVENUE SERVICE

By: \_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
[ENTER OFFICIAL'S NAME]  
NAME PRINTED

\_\_\_\_\_  
[ENTER OFFICIAL'S TITLE]  
TITLE

EIN: \_\_\_\_\_

\_\_\_\_\_  
[ENTER STREET ADDRESS]  
[ENTER CITY, STATE, ZIP]  
ADDRESS

Date: \_\_\_\_\_

By: \_\_\_\_\_  
SIGNATURE

\_\_\_\_\_  
[ENTER MANAGER'S NAME]  
NAME PRINTED

Employee ID [ENTER MGR ID #]  
Group Manager, Indian Tribal Governments  
TITLE

\_\_\_\_\_  
[ENTER STREET ADDRESS]  
[ENTER CITY, STATE, ZIP]  
ADDRESS

Date: \_\_\_\_\_



## TRDA (Gaming Industry)

## Attachment A

[illegible]

%TAXPAYER\_NAME%  
[ENTER NAME OF TRIBE]  
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EIN: %TIN%

Date: [ENTER DATE]

**TRDA (Gaming Industry)**

**Attachment B**

**Tipped Employee Participation Agreement**

I am an employee of Test Casino and wish to participate in my employer's tip reporting program.

In accordance with a Tip Rate Determination Agreement (Gaming Industry) between my employer and the Internal Revenue Service, I agree to report my tips to my employer, as required by law, at or above the tip rate established by my employer and approved by the IRS for my Occupational Category.

**EMPLOYEE:**

Name (printed): \_\_\_\_\_

Social Security Number: \_\_\_\_\_

Home Address: \_\_\_\_\_

\_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_